MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT.—The plaintiff's decedent, who was a teamster in the employ of the defendant, by reason of loss of memory caused by a personal injury received about five years before by falling from his wagon, lost his way while driving, left his wagon and wandered about and fell into a swamp, where he remained all night, by reason of which exposure pneumonia was contracted and death ensued. *Held,* that his death did not arise "out of and in the course of" his employment, within the Workmen's Compensation Act, (St. 1911, c. 751, as amended by St. 1912, c. 571.). *Milliken* v. *A. Towle & Co.,* (Mass. 1914) 103 N. E. 898.

The court remarks that "the difficulty in the case arises from the provision that the personal injury must be one 'arising out of' as well as one 'in the course of his employment,' and that the injury here did not 'arise out of' Milliken's employment. The fact that Milliken 'would not have met his death as he did but for the horse and wagon and his efforts to get them to the stable' goes no farther than to show that the personal injury suffered by Milliken was a personal injury 'in the course of his employment.'" *McNicol's Case,* 215 Mass. 497. The correctness of the court in the construction of the words "arising out of and in the course of employment" cannot be seriously questioned. It has been generally held that the words are used conjunctively, not disjunctively, and are therefore to be construed as meaning different things. Explanatory of the meaning, *Buckley,* L. J., observes; "The words 'out of' point, I think, to the origin or cause of the accident; the words 'in the course of' to the time, place and circumstances under which the accident takes place." *Fitzgerald v. Clark,* 99 L. T. 101; *Whitbread* v. *Arnold,* 99 L. T. 103; *Hill* v. *Begg,* 99 L. T. 104; *Hawkins* v. *Powell's Tillery Steam Coal Co.,* 104 L. T. 365; *Barnabas* v. *Bersham Colliery Co.,* 103 L. T. 513.

MUNICIPAL CORPORATIONS—POWER TO REGULATE STREET EXCAVATIONS.—A gas and electric company laid pipes and conduits in various streets of a city. Subsequently, an amendment to the state constitution was made, providing that "in any city where there are no public works owned and controlled by the municipality any individual or any company shall under the direction of the superintendent of streets, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and of laying down pipes and conduits therein." Still later, the city passed an ordinance making it unlawful to excavate in any street without permission from the board of public works, to be had on written application showing the location and purpose of the excavation, the right of the applicant, and such application to be accompanied by a deposit to cover the cost of inspection and restoration of the surface. *Held,* although the gas and electric company had a vested right to occupy such part of the street, the ordinance in question was not invalid, since it did not give the board any discretion to grant or refuse a certificate. The requirements of written application and deposit were legitimate regulations, because they furnished evidence showing who alone were

entitled to the right to enter and excavate. *Ex parte Keppelman,* (Cal. 1914), 138 Pac. 346.

The principal case is interesting as showing the strenuous effort of the California court to extricate the municipalities of the state from the danger to which, as a result of the above-mentioned constitutional provision as interpreted by earlier decisions, they were apparently subject. In *People* v. *Stephens,* 62 Cal. 209, the court held such provision to be a direct grant from the people to the persons therein designated of the right to lay pipes in city streets for the specified purposes, without legislative permission, and free from legislative interference. The privileges of water or light companies were still further emphasized in the case of *In re Johnston,* 137 Cal. 115, 69 Pac. 973. The question there before the court was whether an ordinance of the city of Pasadena, prohibiting the laying in the city streets of pipes for gas or water without first obtaining a permit from the superintendent of streets was in violation of the constitutional provision supra. The court said, "The constitution does not authorize the municipality to require a permit as a condition upon which the pipes may be laid in its streets, and its claim of a right to require a permit includes the right to refuse one; and the right to annex one condition to the exercise of the privilege implies the right to annex others, which may at least impair, if not in fact amount to a denial of, its exercise." In the principal case the court attempts a distinction between the ordinance there in question and the ordinance construed in the Johnston case, the basis of the distinction being that the ordinance in the latter case asserted a right on the part of the municipality to grant or refuse a permit in its discretion. It is somewhat difficult to see any real difference between the cases, and the complaint of MELVIN, J., that "the opinion in that proceeding (the *Johnston* case) and the one prepared * * * in this are in conflict upon the fundamental question involved in each," seems well taken. That an ordinance which attempts to make the exercise of a constitutional or statutory right subject to the discretion of city officers puts an unwarranted limitation upon that right is of course a proposition universally conceded. *City of Atlanta* v. *Gate City Co.,* 71 Ga. 106; *Mich. Telephone Co.* v. *City of Benton Harbor,* 121 Mich. 512, 80 N. W. 386; *Hodges* v. *Telegraph Co.,* 72 Miss. 910, 18 So. 84.

MUNICIPAL CORPORATIONS—RIGHT OF TOWN CONSTABLE TO REWARD.—Plaintiff was duly elected town constable and qualified for the office, receiving compensation for his duties, though there was no evidence that it was regularly paid, or that defendant town had contracted specially to pay plaintiff any particular salary. Defendant offered a reward "to any person furnishing evidence that will convict the person or persons who" had set recent fires in the town. Plaintiff engaged in detective work, was successful in apprehending the culprit, and sued defendant for the reward. *Held,* that plaintiff could recover. *Hartley* v. *Inhabitants of Granville,* (Mass. 1913), 102 N. E. 942.

It is certainly true, as the court in the principal case remarks, "the case on its facts is rather close to the line." It is well settled that a promise